

HON. JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMARI TAHIR, aka JAMES C. GARRETT,

Plaintiff,

v.

KSHAMA SAWANT, Seattle City Council,
in her official capacity as Chairwoman of
Seattle City Light; SEATTLE CITY LIGHT;
MARGARET DELANEY, individually, and
in her official capacity as Managing
Director of Midtown Limited Partners;
BRUCE HARRELL, individually, and in his
official capacity as President of the City of
Seattle Council; and MIDTOWN LIMITED
PARTNERS,

Defendants.

NO. 2:16-cv-00413-JLR

MOTION BY MIDTOWN LIMITED
PARTNERSHIP AND MARGARET
DELANEY, AS ITS FORMER
GENERAL PARTNER, TO DISMISS OR
STAY ALL CLAIMS AGAINST THEM,
AND TO CANCEL LIS PENDENS

NOTED FOR CONSIDERATION:
October 7, 2016

I. RELIEF REQUESTED / SUMMARY OF ARGUMENT

Defendants MidTown Limited Partnership ("MidTown") and its former general partner, Margaret Delaney (collectively, "MidTown Defendants") seek an order dismissing this case as to them.

First, the claims against the MidTown Defendants should be dismissed under Federal Rule of Civil Procedure 4(m). The summons and complaint were not served until more than 90 days after the complaint was filed. Even then, service was invalid. It

MOTION BY MIDTOWN AND DELANEY TO
DISMISS OR STAY ALL CLAIMS AGAINST THEM,
AND TO CANCEL LIS PENDENS - 1
[Case No. 2:16-cv-00413-JLR]

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1 was only upon counsel, not the MidTown Defendants. Counsel is not authorized to
2 accept service of process.

3 *Second*, the claims against the MidTown Defendants should be dismissed because
4 they duplicate claims pending in a case entitled, *Omari Tahir, aka James C. Garrett v.*
5 *Margaret Delaney, individually and in her official capacity as Managing Director of Midtown*
6 *Center, LLC; and MidTown Center, LLC*, United States District Court, Western District of
7 Washington, Cause No. 2:15-cv-02017-JCC (“First Case”).

8 This Court has discretion to dismiss a case that duplicates claims that were
9 previously pending before another judge of this district. In the alternative, the MidTown
10 Defendants request a stay of this “Second Case” until the identical issues pending in the
11 First Case are decided.

12 Regardless of whether the Court dismisses, stays, or hears these claims against
13 the MidTown Defendants, they request, for the reasons set forth below, that the Court
14 cancel the lis pendens filed in connection with this Second Case on March 25, 2016.

15 II. BACKGROUND

16 MidTown owns commercial property located in Seattle’s central area
17 (“Property”). Mr. Tahir filed his Complaint in the First Case (“First Complaint”) on
18 December 28, 2015. A copy of the First Complaint is *Exhibit A* to the Declaration of
19 Stephen J. Sirianni.¹ Mr. Tahir claimed discrimination under Title VI of the Civil Rights
20 Act of 1964, 42 U.S.C. § 2000d, adverse possession of the Property, and a right of recovery
21 against Ms. Delaney, MidTown’s former general partner, for assault and defamation. At
22 the time Mr. Tahir filed the Complaint in the First Case, he also filed a lis pendens
23 seeking to prevent a potential sale of the Property. *Exh. B*.

24
25 ¹ All exhibits referenced in this Motion are attached to the Declaration of Stephen J. Sirianni, filed with
26 this Motion.

1 MidTown sought dismissal of the First Case for lack of subject matter jurisdiction
 2 and for failure to state a claim. It also moved to cancel the lis pendens. On April 21,
 3 2016, Judge Coughenour in the First Case dismissed the adverse possession claim but
 4 declined to dismiss the remaining claims. *Exhibit D* is a copy of the Order Granting in
 5 Part and Denying in Part MidTown's Motion to Dismiss. On June 16, 2016, on
 6 reconsideration, the Court also ordered the lis pendens canceled. *Exh. E*.

7 Mr. Tahir filed this Second Case on March 28, 2016. A copy of the Complaint
 8 ("Second Complaint") is *Exhibit F*. On the same date, Mr. Tahir caused a second
 9 lis pendens to be recorded in the King County records. A copy of the second lis pendens
 10 is *Exhibit G*.

11 The MidTown Defendants have never been served with the Summons and
 12 Complaint in the Second Case. On August 11, 2016, Mr. Tahir served those papers on
 13 attorneys for the MidTown Defendants in other matters. Further, those attorneys are not
 14 authorized to accept service of process. Sirianni Decl., ¶3; Benis Decl., ¶2.

15 The Second Complaint is substantially duplicative of the First Complaint. Thus:

16 (a) In both cases, Mr. Tahir claims "title" to the Property. *Exh. F*, ¶¶8, 10;
 17 *Exh. D*, ¶¶10, 12.

18 (b) In both cases, Mr. Tahir's claim to title in the Property is based on alleged
 19 adverse possession. *Exh. A*, ¶¶10-14; *Exh. F*, ¶¶12-16.

20 (c) In both cases, Mr. Tahir claims that Ms. Delaney asserts "an estate or
 21 interest in the [Property] that is racially adverse to" him. *Exh. A*, ¶15; *Exh. E*, ¶17.

22 (d) In both cases, Mr. Tahir claims MidTown has received federal financial aid
 23 in the past and is attempting to sell its Property in violation of Title VI of the Civil Rights
 24 Act of 1964, 42 U.S.C. § 2000d. *Exh. A*, ¶¶2, 20, 21 (defendants "underhandedly and
 25 secretly, listed the property for sell through an all-White elite buy and sell real-estate
 26

1 members only club”); *Exh. F*, ¶¶2, 23, 27 (defendants “are engaging in ethnic cleansing
2 of Seattle’s Central District, by and through, gentrification”).

3 (e) In both cases, Mr. Tahir claims a right to an injunction restraining
4 MidTown from selling the Property “without just compensation.” *Exh. A*, ¶22; *Exh. F*,
5 ¶26.

6 (f) In both cases, Mr. Tahir seeks a judgment for \$12,000 per year for eight
7 years, with treble damages for “caretaker” damages. *Exh. A*, p. 7; *Exh. F*, p. 5.

8 (g) In both cases, Mr. Tahir seeks a substantial monetary judgment against
9 Ms. Delaney personally. In both cases, he seeks \$100,000 for “defamation.” *Exh. A*, p. 7,
10 *Exh. F*, p. 5. In the First Complaint, he also seeks \$200,000 in damages against her caused
11 by an alleged assault (*Exh. A*, p. 7). In the Second Complaint, he seeks \$5.5 million
12 against her for alleged “racial harassment.”

13 There are only two substantive differences between the two Complaints. *First*,
14 the Second Complaint alleges Ms. Delaney’s complicity in a scheme to shut off
15 Mr. Tahir’s utilities. Although that claim does not expressly appear in his First
16 Complaint, Mr. Tahir has made utility termination a subject of the First Case.

17 In response to the MidTown Defendants’ motion to dismiss his First Complaint,
18 and before he filed the Second Complaint, Mr. Tahir asserted that the alleged cutoff of
19 his utilities was evidence of racial discrimination. *Exh. C*, pp. 3, 7. In denying
20 MidTown’s motion to dismiss for lack of standing, the Court in the First Case referred
21 to this allegation as a basis for standing. *Exh. D*, p. 6. Hence, Mr. Tahir’s complaint
22 regarding alleged utility termination can be considered in the First Case. In fact, the
23 Court has already considered it.

24 *Second*, Mr. Tahir names City of Seattle officials and Seattle City Light
25 (collectively, “City Defendants”) as defendants in the Second Case. They are not parties
26 to the First Case. He makes several allegations in the Second Complaint against them

1 that do not involve the MidTown Defendants. In particular, he alleges the City
 2 Defendants unlawfully terminated utilities at properties with which MidTown has no
 3 connection. *Exh. F*, ¶20. That paragraph reflects an acrimonious history between
 4 Mr. Tahir and the City Defendants that has never involved the MidTown Defendants.
 5 (He also alleges discrimination in City funding that is unrelated to the MidTown
 6 Defendants. *Exh. F*, ¶28.) Whatever grievances Mr. Tahir has with the City Defendants,
 7 they can be resolved without the participation of the MidTown Defendants.

8 III. THE MIDTOWN DEFENDANTS SHOULD BE DISMISSED

9 A. Mr. Tahir has Violated Fed. R. Civ. P. 4(m)

10 Fed. R. Civ. P. 4(m) requires service to be accomplished within 90 days after the
 11 complaint was filed. The Second Complaint was filed on March 28, 2016. The MidTown
 12 Defendants have not properly been served. On August 11, 2016, the Summons and
 13 Second Complaint were delivered to their attorneys in other disputes. The MidTown
 14 Defendants have not waived personal service, and their attorneys are not authorized to
 15 accept service of process in this action. Sirianni Decl., ¶3; Benis Decl., ¶2.

16 Even if service on the MidTown Defendants' attorneys were proper, it was not
 17 timely made. Not until August 11, 2016, 105 days after filing the Second Complaint, did
 18 Mr. Tahir attempt to serve the MidTown Defendants. This case should be dismissed as
 19 to the MidTown Defendants under Fed. R. Civ. P. 4(m).

20 B. This Action is Duplicative of Pending Litigation

21 Mr. Tahir's complaint should be dismissed against the MidTown Defendants
 22 because it is duplicative of the First Case. A suit is duplicative if the "claims, parties,
 23 and available relief do not significantly differ between the two actions." *Barapind v. Reno*,
 24 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999). The claims and parties, however, need not be
 25 identical. A litigant "has no right to maintain two separate actions involving the same
 26 subject matter at the same time in the same court and against the same defendant. *Id.* at

1 1145, quoting *Walton v. Eaton Corp*, 563 F.2d 66, 70 (3d Cir. 1977). The Court, in its
 2 discretion, may dismiss rather than stay a duplicative action in order to promote
 3 efficiency. *Pacesetter Sys. v. Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1962).

4 The allegations against the MidTown Defendants are substantially identical in
 5 both the First and Second Case, and they can be fully litigated in the First Case, where
 6 the Court has already issued substantive rulings, including dismissal of Mr. Tahir's
 7 adverse possession claim.

8 It is not clear what recovery Mr. Tahir seeks in the Second Case against the City
 9 Defendants. Presumably, he seeks a money judgment. If so, the MidTown Defendants,
 10 even if joint tortfeasors, are not necessary parties. "It has long been the rule that it is not
 11 necessary for all joint tortfeasors to be named as defendants in a single lawsuit." *Temple*
 12 *v. Synthes Corp.*, 498 U.S. 5, 7, 111 S. Ct. 315, 112 L. Ed. 2d 263 (1990) (*per curiam*); *see also*
 13 Fed. R. Civ. P. 19, advisory committee's note to 1966 amend. (noting that "a tortfeasor
 14 with the usual 'joint-and-several' liability is merely a permissive party to an action
 15 against another with like liability").

16 If Mr. Tahir seeks injunctive or declaratory relief against the City Defendants, that
 17 relief could not be in conflict with any injunctive or declaratory relief granted in the First
 18 Case. MidTown is the sole record title holder of the Property. Although Mr. Tahir
 19 apparently seeks to restrain the sale of the Property in both the First and Second Case,
 20 the City Defendants are not necessary parties to such relief. If Mr. Tahir seeks to enjoin
 21 the City Defendants from some action suggested in paragraphs 20, 21 or 28 of the Second
 22 Complaint (*Exh. F*) (unlawfully terminating utilities, unlawful funding decisions), those
 23 actions do not involve the MidTown Defendants. The claims can be adjudicated without
 24 them.

1 In the alternative, the MidTown Defendants request this Court stay this Second
 2 Case pending resolution of the First Case in order to avoid unnecessary expense and
 3 duplication, as well potentially conflicting results.

4 **IV. THE LIS PENDENS SHOULD BE CANCELED**

5 Assuming this Second Case is dismissed against the MidTown Defendants as
 6 requested in this Motion, the lis pendens filed against the Property on March 25, 2016
 7 (*Exh. G*) should be canceled pursuant to RCW 4.28.325. That is because once the action
 8 is dismissed, there is no case pending, and there is no basis for a lis pendens.

9 Even if this Second Case is not dismissed as to the MidTown Defendants, the
 10 lis pendens should still be canceled. A lis pendens may only be filed in connection with
 11 an action "affecting title to real estate." RCW 4.28.320; RCW 4.28.325 (applying the
 12 lis pendens statute to cases filed in federal district court). A lis pendens is improper in a
 13 suit to recover a money judgment, or where plaintiff has no claim to title. *Bramall v.*
 14 *Wales*, 29 Wn. App. 39, 395, 620 P.2d 511 (1981).

15 In this Second Case, the only basis Mr. Tahir alleges for claiming an interest in the
 16 Property is adverse possession. *See Exh. F*, ¶¶12-17. The Court in the First Case has
 17 already: (a) dismissed the identical claim for adverse possession (*Exh. D*, pp. 6-7); and
 18 (b) canceled Mr. Tahir's original lis pendens because there was no claim affecting title to
 19 the Property (*Exh. E*, p. 2).

20 **V. CONCLUSION**

21 For the reasons stated, MidTown and Ms. Delaney request that this Court
 22 (1) dismiss them from this action or, in the alternative, stay the action pending the
 23 resolution of the First Case; and (2) cancel the lis pendens filed by Mr. Tahir with the
 24 King County Recorder's Office as document number 20160325000865.

1 DATED: September 13, 2016.

2 SIRIANNI YOUTZ
3 SPOONEMORE HAMBURGER

4 /s/ Stephen J. Sirianni

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10 Attorneys for Defendants
11 Margaret Delaney and
12 MidTown Limited Partnership
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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- **Omari Tahir**
omariAfrinet@yahoo.com

and I hereby certify that I have mailed by United States Postal Service the document to the following:

- (no manual recipients)
- **Omari Tahir**
P.O. Box 22328
Seattle, WA 98122

DATED: September 13, 2016, at Seattle, Washington.

/s/ Stephen J. Sirianni
Stephen J. Sirianni (WSBA #6957)